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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/043,842      | 01/10/2002  | Richard F. Huyser    | 60,210-053          | 1140             |

7590 11/06/2003

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EXAMINER

SOOHOO, TONY GLEN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1723

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |               |  |
|------------------------------|-----------------|---------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s)  |  |
|                              | 10/043,842      | HUYSER ET AL. |  |
|                              | Examiner        | Art Unit      |  |
|                              | Tony G Soohoo   | 1723          |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 10 January 2002.

2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-50 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☒ Claim(s) 23-50 is/are allowed.

6) ☒ Claim(s) 1-9, 11 and 13 is/are rejected.

7) ☒ Claim(s) 10, 12 and 14-22 is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All   b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>1/10/02</u> . | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4-9, 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Livingstone 3494496.

With regards to the intended use recitation of a mixing chamber, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

A container assembly 12 (a bottle) comprising: a base (bottom of bottle) having an inner wall 12 defining an upper surface and a chamber in the bottle for holding the materials; a cover 6, figures 1 and 3, having an outer periphery and being selectively mounted to said base 12 covering said chamber and being removable from said base exposing said chamber; and a sealing portion 9, figure 9, depending from said cover and engaging said upper surface 15 of said inner wall when said cover is mounted to said base; said sealing portion being at least partially flexible and angled outwardly (figure 3) toward said outer periphery such that during said engagement of said sealing portion with said upper surface, said sealing portion flexes and conforms to said upper surface to seal said mixing chamber for preventing an escape of material from said mixing chamber, column 3, lines 59-75.

With regards to claim 13, note there is a seal 41, 51 in figures 7 and 9, disposed between said cover 5 and said top surface of said base 12 when said cover 5 is mounted to said base.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Livingstone 3494496.

Livingstone discloses all of the recited subject matter as defined within the scope of the claims with the exception of the sealing portion 9 (figure 3) is angled outwardly toward said outer periphery from 0.5 to 20 degrees. Livingstone shows an angled outward direction of the sealing portion 9 however does not point out the particular angle of the outward direction. It is noted that the angle of the slope of the sealing portion would provide an effective engagement to the inside of the wall of 12, and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the slope of the angle of the orientation of the sealing portion 9 to the range of 0.5 to 20 degrees so as to provide an effective engagement of the seal to the inner wall surface.

***Allowable Subject Matter***

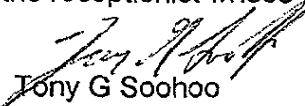
3. Claims 10, 12, 14-22, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claims 23- 50 are allowed.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose locking devices for containers: Cruz 4449984, Metivier 3433385, Miller 1596367, Wobster 5135124, Copperfield et al 663866, Russell 4792087, Hopkins 2257715. The following lids for mixing containers: Stallings 5199788, Hollenback 2453914, Larsen 5676463 and Kroeger 3704007. The Schellenbach 6338414 reference teaches another example of an outward seal member for a bottle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (703) 308-2882. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
Tony G Soohoo  
Primary Examiner  
Art Unit 1723